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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 ALVARO CHAVEZ,

7 Petitioner,

8 v.

9 UNITED STATES OF AMERICA,

10 Respondent.
11

Case No. C07-566 MJP

ORDER DENYING MOTION
FOR MODIFICATION OF
TERM OR IMPRISONMENT

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13 This matter comes before the Court on Mr. Chavez's motion requesting modification of
14 his term of imprisonment under 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10. (Dkt. No. 14.)
15 Having reviewed the motion, the Government's response (Dkt. No. 21), Mr. Chavez's reply
16 (Dkt. No. 28), and the balance of the record, the Court DENIES the motion for the following
17 reasons.

18 Mr. Chavez's motion requests modification of his term of imprisonment under 18
19 U.S.C.S. § 3582(c)(2), which states:

20 The court may not modify a term of imprisonment once it has been imposed except that
21 ... in the case of a defendant who has been sentenced to a term of imprisonment based on
22 a sentencing range that has subsequently been lowered by the Sentencing Commission
pursuant to 28 U.S.C. 994(o), ... the court may reduce the term of imprisonment ... if such
a reduction is consistent with applicable policy statements issued by the Sentencing
Commission.

23 Mr. Chavez argues that Amendment 505 to the sentencing guidelines requires a reduction in his
24 sentence. However, application of the amendment, made retroactive by § 1B1.10(c), does not
25 decrease the Base Offense Level for Mr. Chavez's sentence and therefore has no impact on his
26 guideline range.

1 Amendment 505 altered the Drug Table found at U.S.S.G. § 2D1.1 and lowered the
2 possible Base Offense Level for drug offenses from Level 42 to Level 38. U.S. Sentencing
3 Guidelines Manual, App. C. Amendment 505 (1995). Because Mr. Chavez's Base Offense
4 Level was 36, the amendment does not impact his guideline range.

5 In his reply, Mr. Chavez admits that his "Base Offense Level was not changed as a result
6 of the drug quantity itself, but for the reason of the leadership role." (Dkt. No. 28 at 1.) During
7 sentencing, the Court enhanced Mr. Chavez's Base Offense Level by four points for his
8 leadership role in the criminal activity. Mr. Chavez now argues that the Court should reconsider
9 that four-point enhancement. Section 3582(c)(2) states that this Court has jurisdiction to modify
10 a term of imprisonment when a sentencing range "has subsequently been lowered." There has
11 been no amendment to the guidelines that retroactively alters the leadership role enhancement
12 applied by this Court. Without such an amendment, the Court has no authority to alter the
13 leadership role enhancement and the Court has no jurisdiction to modify the term of Mr.
14 Chavez's imprisonment.

15 Because Mr. Chavez's guideline range is unchanged by any amendment, his motion for
16 re-sentencing or reduction of term of imprisonment is DENIED.

17 The Clerk is directed to send a copy of this order to all counsel of record and mail a copy
18 to Petitioner.

19 Dated: February 20, 2009.

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22 Marsha J. Pechman

23 U.S. District Judge
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